

noise, &c., occurred in the view of the officer, *Howell v. Jackson*, 6 C. & P. 723. But if the entry were forcible, the owner of the house may then give the party in custody, for such an entry is a breach of the peace, &c., *R. v. Wilson supra*.

**Civil liability for forcible entry.**—In *Turner v. Meymott*, 1 Bing. 158, see *Taunton v. Costar*, 7 T. R. 431, it was, however, decided that trespass did not lie against a landlord breaking forcibly into a house *in the absence* of the tenant whose term had expired, though he had left some articles of furniture behind, and see *Hillary v. Gay*, 6 C. & P. 284. But in *Newton v. Harland*, 1 Man. & G. 644, although it was agreed that a landlord who entered forcibly upon his tenant in possession, after the expiration of his term, and turned him out, was guilty of a forcible entry, yet there was a difference of opinion as to the character of the possession the landlord thereby gained, three of the judges, amongst whom was Lord Chief Justice Tindal, holding that if the landlord in making the entry offended against a positive statute, or was guilty of an offence at common law, the possession gained thereby was unlawful, and consequently the landlord could not justify, as being lawfully possessed of the premises, the expulsion of the tenant refusing to go out, and one of them, Coltman J., considering that as against the tenant, who was a wrong-doer and without title, the landlord had obtained a lawful possession by his entry, and might, in a civil action, justify removing the tenant like any other trespasser. In this opinion he was supported by Barons Parke and Alderson, before both of whom the cause had been tried. In *Harvey v. Bridges*, 14 M. & W. 437, in which these latter judges sat, it was held, that where a breach of the peace is committed by a freeholder, who, in order to obtain possession assaults a person wrongfully holding possession against his will, although he is responsible to the public in the shape of an indictment for forcible entry, he is not liable to the other party. And Baron Alderson said he retained his original opinion in *Newton v. Harland*.

**187** \*In *Blades v. Higgs*, 10 C. B. N. S. 713, *Harvey v. Bridges* is said to have overruled *Newton v. Harland*, and it may therefore be considered as settled in England, that it is a perfectly good justification in trespass to say, that the plaintiff was in possession of the land against the will of the defendant, who was owner, and that he entered on it accordingly, even though in doing so a breach of the peace was committed;\* and *Blades v.*

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\* But in *Beddall v. Maitland*, 17 Ch. D. 174, *Newton v. Harland, supra*, was affirmed. It was there held that damages could not be recovered against the rightful owner for forcible entry—none for the entry because the possession did not legally belong to the plaintiff, and none for the force used in the entry because, though the Statute created a crime, it gave no civil remedy. But it was also held that for any independent wrong, such as an assault or injury to furniture, committed in the course of the forcible entry, damages could be recovered even by a person whose possession was wrongful, because the Statute makes a possession obtained by force unlawful, even when it is so obtained by the rightful owner. The court, Fry, J., after a careful discussion of the earlier cases, says: "I think that none of these cases in any way countervail *Newton v. Harland*, which I take to